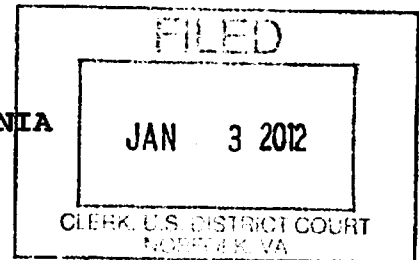


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



CLYDE OWEN DAY, JR., No. 1177017/176167, :

Petitioner, :

v. :

HAROLD W. CLARKE, Director, :
Virginia Department of Corrections, :

Respondent. :

ACTION NO. 2:11cv79

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's conviction for incest on April 12, 2005, in the Circuit Court of the City of Fredericksburg, Virginia, as a result of which he was sentenced to serve 20 years in prison.

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Report and Recommendation filed November 17, 2011, recommends dismissal of the petition. Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On December 5, 2011, the Court received petitioner's Objections to the Report and Recommendation. The respondent filed no response to the objections and the time for


responding has now expired.

The Court, having reviewed the record and examined the objections filed by petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed November 17, 2011. It is, therefore, ORDERED that Respondent's Motion to Dismiss be GRANTED and the Petitioner's petition be DENIED and DISMISSED with prejudice.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to petitioner and counsel of record for respondent.

/s/
Rebecca Beach Smith
Chief
United States District Judge 
REBECCA BEACH SMITH
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
December 30, 2011